#### UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 27

LONGVIEW FIBRE PAPER AND PACKAGING, INC.

and

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS

Case 27-CA-21082 27-CA-21233 27-RC-8534

# RESPONDENT'S REPLY TO GENERAL COUNSEL'S MOTION TO STRIKE

Longview Fibre Paper and Packaging, Inc. (Respondent) hereby files its Opposition to General Counsel's Motion to Strike Respondent's Reply Brief.

On January 28, 2010, both parties filed exceptions and supporting briefs regarding various aspects of the Administrative Law Judge's Decision (ALJD). On February 11, 2010, Respondent filed its Answer to General Counsel's Exceptions but General Counsel elected not to file any Answer to Respondent's Exceptions.

After analyzing the applicable rules, Respondent elected to file a brief in reply to the first half of General Counsel's brief in support of its exceptions entitled, Brief in Support of Administrative Law Judge's Decision and Order. General Counsel argues that Respondent's Reply Brief is untimely under Section 102.46(d)(1). That Section governs Answers to Exceptions. It does not govern reply briefs. Respondent's Reply Brief was filed pursuant to Section 102.46(h) which provides as follows: "Within 14 days from the last date on which an answering brief may be filed pursuant to paragraph (d) or (f) of this section, any party may file a reply brief to any such answering brief."

General Counsel concedes that Respondent's Reply Brief was timely pursuant to Section 102.46(h). General Counsel argues that no reply is permitted where there is no answering brief filed. Nothing in the rules compel this conclusion. The rule simply provides the timeframe for reply briefs, stating that a reply brief is due within 14 from the date an answering brief "may" be filed. The rule does not state that an answering brief must be filed in order to allow a reply.

General Counsel chose not to file an Answer to Respondent's Exceptions. This choice should not prejudice Respondent's right to reply to General Counsel's arguments raised in its Brief in Support of the ALJD. While Section 102.46(a) does allow a party to file a brief in support of the administrative law judge's decision, nothing in the rules provides for a reply to such a brief. Section 102.46(d) governs only Answers to Exceptions and does not expressly permit an Answer to a Brief in Support. Therefore, Respondent's only way to reply to General Counsel's arguments as to why the ALJD should be adopted would be in reply to General Counsel's Answer to Respondent's Exceptions. For that reason alone, General Counsel's motion should be denied. In the alternative, if General Counsel's motion is granted and Respondent's Reply Brief is stricken, the Board should likewise strike General Counsel's Brief in Support of Administrative Law Judge's Decision and Order, which comprises the first half of the brief it filed on January 28, 2010.

DATED this 5th day of March, 2010.

Respectfully submitted,

STOEL RIVES LLP

Jerome L. Rubin, WSBA #5803

Daniel A. Swedlow, WSBA #37933

Attorneys for Respondent

Longview Fibre Paper and Packaging, Inc.

### **CERTIFICATE OF SERVICE**

I certify that on March 5, 2010, I caused the foregoing Respondent's Reply to General

### Counsel's Motion to Strike to be served upon the parties as indicated below:

Michael W. Josserand, Regional Director Region 27 – National Labor Relations Board 700 North Tower, Dominion Towers 600 17th Street Denver, CO 80202 michael.jossesrand@nlrb.gov	<ul> <li>() U.S. Mail, first class, postage prepaid</li> <li>(X) Via Email Delivery</li> <li>() Via Federal Express</li> <li>() Via Facsimile</li> <li>() Via Hand Delivery</li> </ul>
Mr. Paul Cloer AWPPW Organizing Coordinator Assoc. of Western Pulp and Paper Workers PO Box 4566 Portland, OR 97208 paul.cloer@awppw.org	<ul> <li>(X) U.S. Mail, first class, postage prepaid</li> <li>(X) Via Email Delivery</li> <li>( ) Via Federal Express</li> <li>( ) Via Facsimile</li> <li>( ) Via Hand Delivery</li> </ul>
Division of Judges National Labor Relations Board The Honorable Judge Gregory Z. Meyerson 901 Market, Suite 300 San Francisco, CA 94103	<ul> <li>(X) U.S. Mail, first class, postage prepaid</li> <li>(X) Via E-filing</li> <li>( ) Via Federal Express</li> <li>( ) Via Facsimile</li> <li>( ) Via Hand Delivery</li> </ul>
Adam Zapala Davis Cowell & Bowe, LLP 595 Market Street, Suite 1400 San Francisco, CA 94105 az@dcbsf.com	<ul> <li>(X) U.S. Mail, first class, postage prepaid</li> <li>(X) Via Email Delivery</li> <li>( ) Via Federal Express</li> <li>( ) Via Facsimile</li> <li>( ) Via Hand Delivery</li> </ul>
Nancy S. Brandt Field Attorney National Labor Relations Board 10939 N Alpine Hwy, #136 Highland, UT 84003 Nancy.Brandt@nlrb.gov	<ul> <li>(X) U.S. Mail, first class, postage prepaid</li> <li>(X) Via Email Delivery</li> <li>( ) Via Federal Express</li> <li>( ) Via Facsimile</li> <li>( ) Via Hand Delivery</li> </ul>

# On March 5, 2010 the signed original Respondent's Reply to General Counsel's

## Motion to Strike was sent to the following address of the Regional Director of the NLRB:

	1 - 1
Michael W. Josserand, Regional Director	(X) U.S. Mail, first class, postage prepaid
Region 27 – National Labor Relations Board	( ) Via E-Filing
700 North Tower, Dominion Towers	( ) Via Federal Express
600 17th Street	( ) Via Facsimile
Denver, CO 80202	( ) Via Hand Delivery

Jerome L. Rubin
Daniel A. Swedlow

Attorneys for Respondent

Longview Fibre Paper and Packaging, Inc.